

*Law Offices
of
Mark A. Cuthbertson*

434 New York Avenue
Huntington, NY 11743

cuthbertsonlaw.com

P: (631) 351-3501

F: (631) 614-4314

231521

Mark A. Cuthbertson

Jessica P. Driscoll

Joseph C. DeJesu

Of Counsel
Michelle M. Pfeifferberger

December 20, 2011

VIA ELECTRONIC FILING

Ms. Cynthia Brown
Surface Transportation Board
395 E. Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings

DEC 20 2011

Part of
Public Record

RE: Town of Babylon and Pinelawn Cemetery – Petition For Declaratory Order
Finance Docket No. 35468

Dear Ms. Brown:

This office represents Pinelawn Cemetery in the above-referenced matter. Please accept this letter as a brief response to the October 11, 2011 submission of the Association of American Railroads ("AAR") (ID No. 231077) and the November 4, 2011 supporting statement by the American Short Line and Regional Railroad Association (ID No. 231249).

In its letter, AAR indicates a concern that "the STB can be deemed to have lost its exclusive and preemptive jurisdiction under 49 U.S.C. § 10501(b)(2) over rail transportation facilities owned or leased by a rail carrier as a result of the carrier's entering into a temporary, limited-term lease or operating agreement with a non-carrier regarding such facilities, including for purposes that relate to the carrier's rail transportation operations." AAR Letter at 1. However, AAR's concern is entirely misplaced where, as here, the track at issue is and always has been private track.

Although the Farmingdale Track has been leased to the Long Island Rail Road (now a wholly owned subsidiary of the Metropolitan Transportation Authority) since the early 1900s, it is owned by Pinelawn Cemetery and, as set forth in the Petition, has never been used for "rail transportation" purposes pursuant to 49 U.S.C. § 10501. See Town of Babylon and Pinelawn Cemetery, STB Finance Docket No. 35057 (served October 15, 2009) at 7 ("the Farmingdale Yard facility is not (and never was) part of 'transportation by rail carrier' within the Board's jurisdiction.")

AAR concedes that its letter has no application to the "specific facts presented in [this case.]" If it had reviewed the facts of the Petition, it would have learned that during the period the Property has been leased, the MTA-LIRR never engaged in carrier services over the line. Further, following a series of sub-leases, the Property is now occupied by Coastal Distribution, LLC, a private waste processing company, which the Board has already held - on three separate occasions - is not a rail carrier engaging in rail activity at the Farmingdale Yard. See Town of Babylon and Pinelawn Cemetery – Petition for Declaratory Order, STB Finance Docket No. 35037 (decisions served February

1, 2008, September 26, 2008 and October 15, 2009). Thus, Pinelawn's petition seeks a declaration that the track continues to be used for a private purpose and is not part of the national rail transportation system. On the facts of this case, if the STB granted Pinelawn's petition it would in no way be holding, as AAR argues, that the STB loses jurisdiction over a carrier's property because of a temporary limited term lease to a non-carrier.

Thank you for your time and attention to this matter.

If you have any questions, please feel free to contact me.

Very truly yours,

Jessica P. Driscoll /*116*
Jessica P. Driscoll

JPD:djf

cc: David Lazer, Esq.
A. Craig Purcell, Esq.
Jay Safar, Esq.
Ronald Lane, Esq.
Keith T. Borman, Esq.
Louis P. Warchot, Esq.